

## Appendix B.

### Standard Permit Conditions

Standard permit conditions in Appendix B generally are consistent with the permit provisions required in 40 CFR 122.41 but are modified to reflect the nature of discharges covered under this general permit.

#### B.1 Duty to Comply

Operators must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

- A. Operators must comply with effluent standards or prohibitions established under CWA section 307(a) for toxic pollutants within the time provided in the regulations that establish these standards, even if the permit has not yet been modified to incorporate the requirement.
- B. Penalties for Violations of Permit Conditions: EPA will periodically adjust for inflation the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (61 FR 252, December 31, 1996, pp. 69359–69366, as corrected in 62 FR 54, March 20, 1997, pp.13514–13517) as mandated by the Debt Collection Improvement Act of 1996. This rule allows EPA’s penalties to keep pace with inflation. The Agency is required to review its penalties at least once every 4 years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties following were adjusted for inflation starting in 1996.

##### 1. *Criminal Penalties*

- 1.1 *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than \$2,500 nor more than \$25,000 per day of violation, or imprisonment of not more than one year, or both. In the case of a second or subsequent conviction for a negligent violation, a person will be subject to criminal penalties of not more than \$50,000 per day of violation or by imprisonment of not more than two years, or both.
- 1.2 *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person will be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
- 1.3 *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury will upon conviction be subject to a fine of not more than \$250,000 or by imprisonment of not more than

15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person will be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, will, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- 1.4. *False Statement.* The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit will, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance will, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
2. *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. 3701 note) (currently \$37,500 per day for each violation).
3. *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows
  - 3.1 *Class I Penalty.* Not to exceed the maximum amounts authorized by CWA section 309(g)(2)(A) and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. 3701 note) (currently \$11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$37,500).
  - 3.2 *Class II Penalty.* Not to exceed the maximum amounts authorized by CWA section 309(g)(2)(B) and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. 3701 note) (currently \$11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$157,500).

## **B.2 Duty to Reapply**

Except as otherwise provided for in Part 1.2.4 of the permit, if an Operator wishes to continue an activity regulated by this permit after the expiration date of this permit, the Operator must apply for and obtain authorization as required by the new permit once EPA issues it.

### **B.3 Need to Halt or Reduce Activity Not a Defense**

It will not be a defense for an Operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this permit.

### **B.4 Duty to Mitigate**

Operators must take all reasonable steps to minimize or prevent any discharge in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment.

### **B.5 Proper Operation and Maintenance**

Operators must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which the Operators installs or uses to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which the Operator installs only when the operation is necessary to achieve compliance with the conditions of this permit.

### **B.6 Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. An Operator's filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

### **B.7 Property Rights**

This permit does not convey any property rights of any sort, or any exclusive privileges.

### **B.8 Duty to Provide Information**

Operators must furnish to EPA or an authorized representative (including an authorized contractor acting as a representative of EPA), within a reasonable time, any information that EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. Operators must also furnish to EPA or an authorized representative upon request, copies of records required to be kept by this permit.

### **B.9 Inspection and Entry**

Operators must allow EPA, or an authorized representative (including an authorized contractor acting as a representative of EPA), upon presentation of credentials and other documents as may be required by law, to do the following:

- A. Enter upon an Operator's premises where a regulated activity is located or conducted, or where records must be kept under the conditions of this permit;
- B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

- C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- D. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

## B.10 Monitoring and Records

- A. Operators must retain records of all reports required by this permit, and records of all data used to complete the NOI for this permit, for a period of at least 3 years from the date the permit expires or the date the Operator's authorization is terminated. That period may be extended by request of EPA at any time.

*[As written, this permit does not require Operators to perform the type of sample collection and monitoring described in the following sections of this appendix, B.10.B through B.10.F. However, where EPA requires any monitoring, consistent with Part 1.2.3 of the Permit, the sample collection and monitoring requirements in B.10.B through B.10.F of this appendix apply to those Operators that collect samples.]*

- B. Samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.
- C. Operators must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, for a period of at least 3 years from the date the permit expires or the date the Operator's authorization is terminated. This period may be extended by request of EPA at any time.
- D. Records of monitoring information must include the following:
  - 1. The date, exact place, and time of sampling or measurements;
  - 2. The individual(s) who performed the sampling or measurements;
  - 3. The date(s) analyses were performed
  - 4. The individual(s) who performed the analyses;
  - 5. The analytical techniques or methods used; and
  - 6. The results of such analyses
- E. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the permit.
- F. The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit will, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

## B.11 Signatory Requirements

- A. All applications, including NOIs, must be signed as follows:
1. For a corporation: By a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions that govern the operation of the regulated activity including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  2. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
  3. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit or the agency (e.g., Regional Administrator of EPA).
- B. Any Pesticide Discharge Management Plan (PDMP), including changes to the PDMP to document any corrective actions taken as required by Part 6, and all reports submitted to EPA, must be signed by a person described in Appendix B, Subsection B.11.A above or by a duly authorized representative of that person. A person is a duly authorized representative only if the following are true:
1. The authorization is made in writing by a person described in Appendix B, Subsection B.11.A;
  2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated activity such as the position of superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
  3. The signed and dated written authorization is included in the PDMP. A copy must be submitted to EPA, if requested.
- C. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.
- D. Changes to Authorization. If an authorization under Appendix B, Subsection B.11.A is no longer accurate because the application activities have been purchased by a different entity, a new NOI satisfying the requirements of Subsection B.11.A must be submitted to EPA. However, if the only change that is occurring is a change in contact information or a

change in the Operator's address, the Operator need only make a modification to the existing NOI submitted for authorization.

- E. Any person signing documents in accordance with Appendix B, Subsections B.11.A or B.11.B above must include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- F. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance will, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

## **B.12 Reporting Requirements**

- A. Anticipated noncompliance. Operators must give advance notice to EPA of any planned changes in the permitted activity which may result in noncompliance with permit requirements.
- B. Transfers. This permit is not transferable to any person except after notice to EPA. Where an Operator wants to transfer coverage under the permit to a new Operator, the original Operator (i.e., the first Operator) must submit a Notice of Termination pursuant to Part 1.2.5. The new Operator must submit a NOI in accordance with Part 1.2. See also requirements in Appendix B, Subsections B.11.B and B.11.D.
- C. Pesticide Monitoring Reports. This permit does not require Operators to report monitoring results routinely; however, EPA may, pursuant to Part 1.2.3, require certain Operators to monitor and report such results. In such instances, provisions of B.12.C apply.
1. Monitoring data must be submitted to EPA at the appropriate Regional address identified in Part 9.2.
  2. If an Operator monitors any pollutant more frequently than required using test procedures approved under 40 CFR Part 136 or as otherwise specified by EPA, the results of this monitoring must be included in reporting of monitoring data submitted to EPA.
  3. Calculations for all limitations that require averaging of measurements must use an arithmetic mean unless otherwise specified by EPA.
- D. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.

E. Twenty-four hour reporting.

1. In addition to adverse incident and spill reporting requirements in Parts 6.4 and 6.5, respectively, Operators must report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time the Operator becomes aware of the circumstances. A written submission must also be provided within 5 days of the time the Operator becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
2. For purposes of this permit, Operators must submit a 24-hour report under this section for any upset, as defined in Appendix B, Subsection B.13, which exceeds any effluent limitation in the permit.
3. EPA may waive the written report on a case-by-case basis for reports under Appendix B, Subsection B.12.E.2 if the oral report has been received within 24 hours.

F. Other noncompliance. Operators must report all instances of noncompliance not reported under Appendix B, Subsections 12.A, 12.D, and 12.E, at the time any applicable annual or monitoring reports are submitted. The reports must contain the information listed in Appendix B, Subsection 12.E.1.

G. Other information. Where an Operator becomes aware of its failure to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Permitting Authority, the Operator must promptly submit such facts or information.

## **B.13 Upset**

- A. Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the Operator's reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. See 40 CFR 122.41(n)(1).
- B. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Appendix B, Subsection B.13.C are met. Any determination made during administrative review of claims that noncompliance was caused by an upset, and before an action for noncompliance, is not final administrative action subject to judicial review. See 40 CFR 122.41(n)(2).
- C. Conditions necessary for a demonstration of upset. See 40 CFR 122.41(n)(3). An Operator who wishes to establish the affirmative defense for an upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that
1. An upset occurred and that the Operator can identify the cause(s) of the upset;
  2. The permitted activity was at the time being properly operated; and

3. The Operator submitted notice of the upset as required in Appendix B, Subsection B.12.E.2 (24 hour notice).
  4. The Operator complied with any remedial measures required under Appendix B, Subsection B.4.
- D. Burden of proof. In any enforcement proceeding, the Operator, as the one seeking to establish the occurrence of an upset, has the burden of proof. See 40 CFR 122.41(n)(4).